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8 *Gavin Newsom and California Department of*
Corrections and Rehabilitation

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13
14 **JOHN ARMSTRONG, et al.,**

15 Plaintiffs,

16 v.

17 **GAVIN NEWSOM, et al.,**

18 Defendants.
19

C 94-2307 CW

DECLARATION OF D. MONTOYA

20 I, D. Montoya, declare:

21 1. I am a correctional officer employed by the California Department of Corrections
22 and Rehabilitation. I work at California State Prison, Los Angeles County. I am competent to
23 testify to the matters set forth in this declaration, and if called upon by this Court, I could and
24 would so testify.

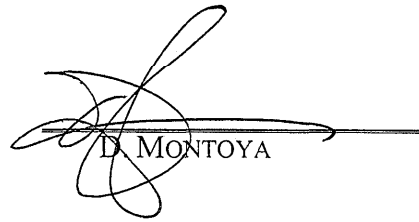
25 2. I have been informed that an issue in this case concerns an incident that occurred
26 on February 16, 2019 at approximately 11:06 a.m. involving inmate [REDACTED]

27 3. I promptly wrote a report to document that incident at or near the time that it
28 occurred. A copy of that report is attached to this declaration as Exhibit A. The report accurately

1 describes the incident that occurred, and I incorporate the contents of my report into this
2 declaration by reference.

3 I swear under penalty of perjury that the statements in this declaration are true. Signed on
4 October 15, 2020, at Lancaster, California.

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D. MONTOYA

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EXHIBIT A

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

CRIME / INCIDENT REPORT

PART C – STAFF REPORT

CDCR 837-C (REV. 10/15)

Page 1 of 2

INCIDENT LOG NUMBER

NAME: LAST MONTROYA	FIRST	MI J	DATE OF INCIDENT 02-16-2019	TIME OF INCIDENT 1106 hours
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POST # 221671	POSITION	YEARS OF SERVICE 11 YRS. 07 MO.	DATE OF REPORT 02-16-2019	LOCATION OF INCIDENT
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RDO'S THUR-FRI	DUTY HOURS 0600-1400	DESCRIPTION OF CRIME / INCIDENT BATTERY ON A PEACE OFFICER RESULTING IN THE USE OF FORCE	CCR SECTION / RULE 3005 (d)(1)	<input type="checkbox"/> N/A
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YOUR ROLE	WITNESSES (PREFACE S-STAFF, V-VISITOR, O-OTHER)	INMATES (PREFACE S-SUSPECT, V-VICTIM, W-WITNESSES)
<input type="checkbox"/> Primary	(S) J. Ferro	
<input checked="" type="checkbox"/> Responder	(S) S. Khodabakhshyan	
<input type="checkbox"/> Witness	(S) A. Jones	
<input type="checkbox"/> Camera	(S) A. Lopez	
<input type="checkbox"/> Victim		
<input type="checkbox"/> Other:		

☐ N/A FORCE USED BY YOU – TYPE OF WEAPON / SHOTS FIRED / NON-CONVENTIONAL FORCE

Physical:	Lethal Weapons	Warning:	Effect:	Less Lethal Weapons:	# Effect:	Chemical Agent:	Projector:	# Deployed
<input type="checkbox"/> Hand-Held Baton	<input type="checkbox"/> Mini-14			<input type="checkbox"/> 37 mm		<input type="checkbox"/> OC		
<input type="checkbox"/> X-10 BRD w/o OC	<input type="checkbox"/> .38 Cal			<input type="checkbox"/> 40 mm		<input type="checkbox"/> OC		
<input type="checkbox"/> X-10 BRD w/ OC	<input type="checkbox"/> .40 Cal			<input type="checkbox"/> L8		<input type="checkbox"/> CS		
	<input type="checkbox"/> 9 mm			<input type="checkbox"/> 40 mm Multi				
	<input type="checkbox"/> Shotgun			<input type="checkbox"/> HFWS				

☐ Non-Conventional or Force Not Listed Above:

FORCE OBSERVED BY YOU ☐ N/A ☒ Physical ☐ Hand-Held Baton ☐ Chemical Agent ☐ X-10 ☐ Less Lethal ☐ Lethal ☐ Non-Conventional

EVIDENCE COLLECTED BY YOU	EVIDENCE DESCRIPTION	EVIDENCE DISPOSITION	BIO HAZARD	PPE
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> N/A	<input checked="" type="checkbox"/> N/A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

REPORTING STAFF INJURED	DESCRIPTION OF INJURY	LOCATION TREATED (HOSPITAL/CLINIC)	FLUID EXPOSURE	SCIF 3301 /3067 COMPLETED
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input checked="" type="checkbox"/> N/A	<input checked="" type="checkbox"/> N/A	<input type="checkbox"/> BODILY <input checked="" type="checkbox"/> N/A <input type="checkbox"/> UNKNOWN <input type="checkbox"/> Other	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

NARRATIVE

On February 16, 2019, at approximately 1106 hours, I responded to personal alarm activation within Facility B housing unit 1.

As I was approaching the A-section of Building one, I observed an inmate later identified as [REDACTED] restraints and being assisted to his feet near the [REDACTED] well with Officers S. A. Jones and A. Lopez. As I was providing dayroom coverage due to non-involved inmates still on the dayroom floor I heard an inmate later identified as Inmate [REDACTED] violently kicking his cell window over and over with his right foot. I approached [REDACTED] and ordered Inmate [REDACTED] stop kicking the cell window, to which [REDACTED] complied. I ordered [REDACTED] turn around and submit to handcuffs through the open food port; [REDACTED] complied and stated "FUCK YEAH LET'S GO".

☒ CHECK IF NARRATIVE IS CONTINUED ON CDCR 837-C1.

SIGNATURE OF REPORTING STAFF D. MONTROYA	TITLE Correctional Officer	BADGE # / ID# [REDACTED]	DATE 02-16-2019
NAME AND TITLE OF REVIEWER (PRINT / SIGNATURE) Correctional Sergeant	DATE RECEIVED 02-16-2019	CLARIFICATION NEEDED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	APPROVED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO DATE 02-16-2019

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

CRIME / INCIDENT REPORT

PART C1 - SUPPLEMENT

CDCR 837-C1 (REV. 10/15)

PAGE 2 OF 2

INCIDENT LOG NUMBER

NAME: LAST

MONTROYA

FIRST

MI

J

TYPE OF INFORMATION:



CONTINUATION OF REPORT



CLARIFICATION OF REPORT



ADDITIONAL INFORMATION

Once [REDACTED] was in restraints I instructed the control booth officer to open [REDACTED]. Once the cell door was open I ordered [REDACTED] to back out of his cell and side step to his left and face the wall, to which he complied. Officer J. Ferrso conducted a clothed body search on [REDACTED] for weapons or contraband with negative results. Ferrso held [REDACTED] left bicep with his right hand while I held [REDACTED] right bicep with my left and we began to escort [REDACTED] down the [REDACTED] dayroom and out the [REDACTED]. Once we approached outside of the [REDACTED] [REDACTED] began yelling his "OOOOOOUUUU" which is a Security Threat Group (STG) Animation Gang call, gaining the attention of the inmate population. As we are escorting [REDACTED] closer to the gym he continued to yell "ALLAH IS GONNA KILL YOU" I gave [REDACTED] a direct order to stop yelling, [REDACTED] willfully refuse all direct orders continued to yell "ALLAH IS GONNA KILL YOU".

Once Ferrso and I entered the gym [REDACTED] began impeding our escort by violently twisting and turning his lower and upper extremities and yelling "FUCK YOU CRACKER ALLAH GONNA KILL YOU". I quickly placed both my hands around [REDACTED] right bicep and utilized my body weight along with [REDACTED] forward momentum and forced [REDACTED] down to the ground. [REDACTED] standing on the gym floor striking his chest then face. Once on the gym floor I quickly repositioned both my hands and applied downward pressure to [REDACTED] left shoulder with my left hand and his right shoulder with my right hand. [REDACTED] continued to violently twist and turn his lower and upper extremities to include moving his head left and right and attempting to bite me. I continued to hold [REDACTED] shoulders and slumped all my weight on [REDACTED] upper back and head area striking [REDACTED] with the code one vest on the back of his head. [REDACTED] started to yell "ALRIGHT" and then stopped his resistive behavior.

Once [REDACTED] stopped his violent behavior S. Khodabakhshyan and I assisted [REDACTED] to standing position once [REDACTED] was in a standing position I noticed a scratch to his upper lip area. Khodabakhshyan and I continued to escort [REDACTED] to the holding module located inside the gym. Once Khodabakhshyan and I approached holding module #6 I searched the module for weapons or contraband with negative results Khodabakhshyan placed [REDACTED] and secured holding [REDACTED]. Once the module was secured Khodabakhshyan conducted an unclothed body search of [REDACTED] upon completion of the unclothed body search Khodabakhshyan initiated the holding cell log.

☐ CHECK IF NARRATIVE IS CONTINUED ON CDCR 837-C1.

SIGNATURE OF REPORTING STAFF D. MONTROYA	TITLE Correctional Officer	BADGE # / ID# [REDACTED]	DATE 02-16-2019
NAME AND TITLE OF REVIEWER (PRINT / SIGNATURE) Correctional Sergeant	DATE RECEIVED 02-16-2019	CLARIFICATION NEEDED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	APPROVED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
			DATE 02-16-2019

DISTRIBUTION: Original: Incident Package Copy: Reporting Employee Copy: Reviewing Supervisor